

112TH CONGRESS
2D SESSION

S. 3085

To provide for the expansion of affordable refinancing of mortgages held by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2012

Mr. MENENDEZ (for himself, Mrs. BOXER, Mr. REED, Mr. MERKLEY, Ms. STABENOW, Mr. DURBIN, Mr. FRANKEN, Mr. BEGICH, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for the expansion of affordable refinancing of mortgages held by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Responsible Home-
5 owner Refinancing Act of 2012”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “current borrower” means a mort-
2 gagor who is current on the subject mortgage at the
3 time of the refinancing, and has had no late pay-
4 ments in the preceding 6 months and not more than
5 1 late payment in the preceding 12 months;

6 (2) the term “eligible mortgage” means any
7 mortgage that—

8 (A) is an existing first mortgage that was
9 made for purchase of, or refinancing of another
10 first mortgage on, a 1- to 4-family dwelling, in-
11 cluding a condominium or a share in a coopera-
12 tive ownership housing association, on or before
13 May 31, 2010;

14 (B) is owned or guaranteed by an enter-
15 prise;

16 (C) with respect to which, the mortgagor is
17 a current borrower; and

18 (D) includes existing first mortgages with
19 a loan-to-value ratio of less than 80 percent.

20 (3) the term “enterprise” means the Federal
21 National Mortgage Association and the Federal
22 Home Loan Mortgage Corporation;

23 (4) the terms “FHFA” and “Director” mean
24 the Federal Housing Finance Agency and the Direc-
25 tor thereof, respectively;

1 (5) the terms “Home Affordable Refinance Pro-
2 gram” and “Program” mean the Home Affordable
3 Refinance Program, administered by the FHFA and
4 the enterprises as part of the Making Home Afford-
5 able initiative announced on March 4, 2009;

6 (6) the term—

7 (A) “LTV” means loan-to-value, or the
8 ratio of the amount of the primary mortgage on
9 a property to the value of that property; and

10 (B) “CLTV” means combined loan-to-
11 value, or the ratio of all mortgage debt on a
12 property to the value of the property;

13 (7) the term “junior lien” means a mortgage on
14 the same property that is—

15 (A) used as collateral for the eligible mort-
16 gage; and

17 (B) in a subordinate position in terms of
18 priority and recording status;

19 (8) the term “same servicer” means a lender
20 that is providing refinancing for a borrower whose
21 loan they already service;

22 (9) the term “qualified lender” means a lender
23 who is eligible to make refinancing loans under the
24 Program;

1 (10) the terms “guarantee fee” has the same
2 meanings as in section 1327(a) of the Housing and
3 Community Development Act of 1992 (12 U.S.C.
4 4547(a)); and

5 (11) the term “average fees” means the average
6 contractual fee rate of single-family guaranty ar-
7 rangements by an enterprise entered into during
8 2012, plus the recognition of any up-front cash pay-
9 ments over an estimated average life, expressed in
10 terms of basis points, such definition to be inter-
11 preted in a manner consistent with the annual re-
12 port on guarantee fees by the FHFA.

13 SEC. 3. STREAMLINED REFINANCING CRITERIA.

14 (a) IN GENERAL.—In carrying out the Home Afford-
15 able Refinance Program, each enterprise shall adopt and
16 adhere to the criteria established under this section.

17 (b) BORROWER ELIGIBILITY.—The enterprises shall
18 include as eligible borrowers in the Home Affordable Refi-
19 nance Program all current borrowers who have an eligible
20 mortgage and meet those underwriting requirements for
21 eligibility for same servicer refinancing in the Program as
22 of March 1, 2012, except that the enterprises may not
23 disqualify or impose varying rules within the Program for
24 borrowers based on LTV, CLTV, employment status or
25 income.

1 (c) REPRESENTATIONS AND WARRANTIES.—The en-
2 terprises shall not require of any lender providing a loan
3 under the Program any representations or warranties for
4 such a loan—

5 (1) for the value, marketability, condition, or
6 property type, as evidenced by the appraisal or alter-
7 native valuation methods, if that lender complies
8 with the enterprises' required methods and stand-
9 ards for ordering an appraisal under the Program;
10 or

11 (2) that are not required of same servicers
12 under the Program as of March 1, 2012, whether
13 that loan is manually underwritten or underwritten
14 through an automated system, except that, under no
15 circumstances shall greater representations and war-
16 ranties be required for a loan that is manually un-
17 derwritten than for one that is underwritten through
18 an automated system.

19 (d) PROHIBITION ON UP-FRONT FEES.—In carrying
20 out the Program, the enterprises may not charge the
21 qualified lender any loan level price adjustment, post set-
22 tlement delivery fee, adverse delivery charge, or other simi-
23 lar up-front fee.

24 (e) APPRAISALS.—The enterprises shall develop and
25 allow alternative streamlined methods to determine the

1 value of the property for which refinancing is sought
2 through the Program that eliminate the costs to the bor-
3 rower and lender associated with such determination.
4 Until such time as such method is developed, and when
5 the existing automated valuation models of the enterprises
6 are unable to determine the value of a certain property
7 for which refinancing is sought through the Program, the
8 enterprises shall bear the costs associated with the use of
9 manual appraisal of that property, without passing on
10 such costs to the borrower or lender.

11 (f) RESUBORDINATION OF JUNIOR LIENS.—

12 (1) IN GENERAL.—If the holder of a junior lien
13 fails to resubordinate that lien, thereby preventing
14 the refinancing of the eligible mortgage through the
15 Program into a new mortgage, the holder of the jun-
16 ior lien shall be liable for an amount equal to 5.0
17 percent of the first mortgage balance, unless—

18 (A) the new mortgage would increase the
19 first mortgage payment;

20 (B) the new mortgage would increase the
21 loan balance by more than 3 percent or \$3,000,
22 whichever is greater;

23 (C) the new mortgage is an adjustable rate
24 mortgage or has a term exceeding 30 years;

1 (D) the borrower has violated the due-on-
2 sale clause at any time;

3 (E) the subordination would put the junior
4 lien at risk of a bankruptcy strip down;

5 (F) the lender seeking to originate the loan
6 through the Program has a lien on the original
7 loan, or services the loan for a party, that is al-
8 ready in a junior position to the junior lien
9 holder; or

10 (G) the underlying trust documents for the
11 junior lien, as of March 1, 2012, explicitly pro-
12 hibit the servicer of the junior lien from impact-
13 ing the security interest of the notes through
14 resubordination.

15 (2) FHFA AUTHORITY.—At the discretion of
16 the Director, the FHFA may add to the list of ex-
17 ceptions in paragraph (1) additional exceptions when
18 the Director determines a refinance would signifi-
19 cantly increase the risk faced by the junior lien hold-
20 er, and in which a failure to resubordinate would be
21 justifiable.

22 (3) ACTIONS BY ENTERPRISES.—Upon submis-
23 sion to an enterprise of documentation by a qualified
24 lender or eligible borrower that the holder of a jun-
25 ior lien has failed to resubordinate its lien, thereby

1 preventing the refinancing of the eligible mortgage
2 through the Program into a new mortgage, the en-
3 terprise shall charge the junior lien holder and re-
4 coup the fine described in paragraph (1), as applica-
5 ble, and shall apply the payment to the balance of
6 the borrower's first mortgage.

7 (4) LIMITATIONS ON LIABILITIES.—A junior
8 lien holder shall not be liable to the enterprise or to
9 anyone else for the fine described in paragraph (1)
10 if, within 30 days of the enterprise's written deter-
11 mination that a junior lien holder has failed to re-
12 subordianate its lien for any reason other than those
13 specified in paragraph (1), that lien holder agrees to
14 resubordinate its lien in compliance with this sec-
15 tion.

16 (g) CARRYOVER OF MORTGAGE INSURANCE.—

17 (1) IN GENERAL.—If a mortgage insurer back-
18 ing an eligible mortgage fails to transfer coverage to
19 a new mortgage refinanced through the Program or
20 places additional underwriting criteria or fees be-
21 yond those required by the Program as a condition
22 of transfer approval, thereby preventing the refi-
23 nancing of the eligible mortgage through the Pro-
24 gram, that mortgage insurer shall be liable for an

1 amount equal to 5.0 percent of the first mortgage
2 balance, unless the new mortgage—

3 (A) would increase the first mortgage pay-
4 ment;

5 (B) would increase the loan balance by
6 more than 3 percent or \$3,000, whichever is
7 greater;

8 (C) is an adjustable rate mortgage or has
9 a term exceeding 30 years; or

10 (D) the borrower has violated the due-on-
11 sale clause at any time.

12 (2) ACTIONS BY ENTERPRISES.—Upon submis-
13 sion to an enterprise of documentation by a qualified
14 lender or eligible borrower that the mortgage insurer
15 has prevented the refinance of an eligible mortgage
16 through the Program into a new mortgage, the en-
17 terprise shall charge the mortgage insurer and re-
18 coup the fine described in paragraph (1), as applica-
19 ble, and shall apply the payment to the balance of
20 the borrower's first mortgage.

21 (3) LIMITATION ON LIABILITY.—A mortgage in-
22 surer shall not be liable to the enterprise or to any-
23 one else for the fine described in paragraph (1) if,
24 within 30 days of the enterprise's written determina-
25 tion that a mortgage insurer has prevented the refi-

1 nancing of an eligible mortgage for any reason other
2 than those specified in paragraph (1), that mortgage
3 insurer agrees to transfer coverage in compliance
4 with this section.

5 (h) LIMITATION.—Notwithstanding any other provi-
6 sion of law, the enterprises shall not be prevented from
7 purchasing or guaranteeing a mortgage resulting from the
8 refinancing of an eligible mortgage pursuant to this sec-
9 tion and subject to all other provisions of this section.

10 (i) GUARANTEE FEES.—

11 (1) IN GENERAL.—

12 (A) AVERAGE FEE.—On each mortgage re-
13 financed under the Program in accordance with
14 this section, the enterprises shall set the aver-
15 age fee required under this Act, as determined
16 by the Director in an amount not less than the
17 average fees imposed in 2012 for such guaran-
18 tees. The Director shall prohibit an enterprise
19 from offsetting the cost of the fee to the mort-
20 gage originators, borrowers, and investors by
21 decreasing other charges, fees, or premiums, or
22 in any other manner.

23 (B) AUTHORITY TO LIMIT OFFER OF
24 GUARANTEE.—The Director shall prohibit an
25 enterprise from consummating any offer for a

1 guarantee to a lender for mortgage-backed se-
2 curities, if the guarantee is inconsistent with
3 the requirements of this section.

4 (2) INFORMATION COLLECTION AND ANAL-
5 YSIS.—The Director shall require each enterprise to
6 provide to the Director, as part of its annual report
7 submitted to Congress, for loans refinanced under
8 the Program—

9 (A) a description of changes made to up-
10 front fees and annual fees as part of the guar-
11 antee fees negotiated with lenders; and

12 (B) an assessment of how the changes in
13 the guarantee fees described in subparagraph
14 (A) met the requirements of paragraph (1).

15 (j) REGULATIONS.—Not later than 30 days after the
16 date of enactment of this Act, the Director shall issue any
17 regulations or guidance necessary to carry out the changes
18 to the Program established under this section, which regu-
19 lations or guidance shall be put into effect not later than
20 90 days after the date of enactment of this Act.

21 (k) TERMINATION.—The requirements of this section
22 shall expire concurrent with the expiration of the Pro-
23 gram.

1 **SEC. 4. INFORMATION FOR BORROWERS ON ELIGIBILITY**2 **FOR THE PROGRAM.**

3 (a) NOTICE TO BORROWERS.—Not later than 60
4 days after the date of enactment of this Act, the enter-
5 prises shall notify all borrowers with a mortgage owned
6 or guaranteed by an enterprise about the Program and
7 its eligibility criteria, and inform borrowers of the website
8 required under subsection (b).

9 (b) PUBLIC ACCESS TO ELIGIBILITY CRITERIA.—The
10 Director shall establish, and the enterprises shall display
11 a link on their homepages to, a single website where bor-
12 rows may—

13 (1) determine their potential eligibility for par-
14 ticipation in the Program;

15 (2) see a complete list of and links to partici-
16 pating lenders;

17 (3) use a mortgage refinance calculator to cal-
18 culate potential payment savings based on different
19 interest rates; and

20 (4) obtain tips on refinancing their loan.

21 **SEC. 5. CONSISTENT REFINANCING GUIDELINES RE-**
22 **QUIRED.**

23 Not later than 60 days after the date of enactment
24 of this Act, the FHFA shall issue guidance to require the
25 enterprises to make their refinancing guidelines consistent
26 to ease lender compliance requirements, and in particular

1 with respect to loans with less than an 80 percent loan-
2 to-value ratio and closing cost policies of the enterprises,
3 which regulations or guidance shall be put into effect not
4 later than 90 days after the date of enactment of this Act.

5 **SEC. 6. PROGRESS REPORTS.**

6 The Director shall provide to Congress monthly re-
7 ports on the progress of the Program, and each enterprise
8 shall include and disclose, as part of its filings with the
9 Securities and Exchange Commission on Form 10-Q,
10 Form 10-K, or any successors thereto, detailed informa-
11 tion on each enterprise's progress and results in imple-
12 menting and executing the Program.

